2-39

FEB 13 1943

CHARLES ELMORE CROPLEY
CLERK

653907
Supp. Ct

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1942

No. [redacted] 2

HARTFORD-EMPIRE COMPANY, F. GOODWIN SMITH, BARTLETT ARKELL, ET AL.,
Appellants,

vs.

THE UNITED STATES OF AMERICA.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO.

STATEMENT AS TO JURISDICTION.

JOHN T. CAHILL,
THURLOW M. GORDON,
E. J. MARSHALL,
S. S. WALL,
Counsel for Appellants.

INDEX.

Subject Index.

	Page
Statement as to jurisdiction	1
Judgment and appeal	1
Jurisdiction	2
Statutes	2
Nature of case and ruling below	4
The questions are substantial	6

Table of Cases Cited.

Atlantic Cleaners and Dyers, Inc. v. *U. S.*, 286 U. S. 427	2
Chrysler Corporation v. *U. S.*, 316 U. S. 556	2
Ethyl Gasoline Corp. v. *U. S.*, 309 U. S. 436	2
International Business Machines Corp. v. *U. S.*, 298 U. S. 131	2
Missouri-Kansas Pipe Line Co. v. *U. S.*, 312 U. S. 502	2
Sugar Institute v. *U. S.*, 297 U. S. 553	2
Swift & Co. v. *U. S.*, 276 U. S. 311	2
United Shoe Machinery Co. v. *U. S.*, 258 U. S. 451	2
United States v. *California Canneries*, 279 U. S. 553	2
United States v. *Masonite Corporation*, 316 U. S. 265	2
United States v. *Univis Lens Co.*, 316 U. S. 241	2

Statutes Cited.

Clayton Act of October 15, 1914, Sections 3 and 15 (Act of October 15, 1914, c. 323, Secs. 3 and 15, 38 Stat 731 and 736, 15 U. S. C. Secs. 14 and 25)	3
Expediting Act of February 11, 1903, Section 2 as amended (32 Stat. 823, 36 Stat. 1167)	2
Judicial Code, Section 238, as amended (36 Stat. 1157, 38 Stat. 804, 43 Stat. 938)	2
Sherman Act of July 2, 1890, Sections 1, 2 and 4 (Act of July 2, 1890, c. 647, Secs. 1, 2 and 4, 26 Stat. 209, as amended by 36 Stat. 1167 and 50 Stat. 693, 15 U. S. C. Secs. 1, 2 and 4)	2

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION

Civil Action No. 4426

UNITED STATES OF AMERICA,

Plaintiff,

v.

HARTFORD-EMPIRE COMPANY, ET AL.,

Defendants.

STATEMENT AS TO JURISDICTION.

Hartford-Empire Company, a corporation, and F. Goodwin Smith, Bartlett Arkell, Alexander D. Falck, Robson D. Brown, Roger M. Eldred, Karl E. Peiler, Arthur T. Safford, Jr., Theodore L. Champeau, A. M. Pease, Amory Houghton and Arthur A. Houghton, Jr., individuals, collectively referred to in the above-entitled cause as defendants associated with Hartford-Empire Company, file this their statement in compliance with Rule 12 of the Supreme Court of the United States showing the basis on which the Supreme Court has jurisdiction on appeal to review the Final Judgment entered herein:

Judgment and Appeal.

The Final Judgment of the District Court, herein sought to be reviewed, was entered October 8, 1942.

A Petition for Appeal to the Supreme Court was filed on December 3rd, 1942, and is presented to the District Court herewith December 3rd, 1942.

Jurisdiction.

The statutory jurisdiction of the Supreme Court of the United States to review by direct appeal the Final Judgment entered in this cause is conferred by Section 2 of the Expediting Act of February 11, 1903, as amended (32 Stat. 823, 36 Stat. 1167) and by Section 238 of the Judicial Code, as amended (36 Stat. 1157, 38 Stat. 804, 43 Stat. 938).

Among the decisions sustaining the jurisdiction of the Supreme Court under similar circumstances are *United Shoe Machinery Co.* v. *United States,* 258 U. S. 451; *Swift & Co.* v. *United States,* 276 U. S. 311; *United States* v. *California Canneries,* 279 U. S. 553; *Atlantic Cleaners and Dyers, Inc.* v. *United States,* 286 U. S. 427; *International Business Machines Corp.* v. *United States,* 298 U. S. 131; *Sugar Institute* v. *United States,* 297 U. S. 553; *Ethyl Gasoline Corp.* v. *United States,* 309 U. S. 436; *Missouri-Kansas Pipe Line Co.* v. *United States,* 312 U. S. 502; *United States* v. *Masonite Corporation,* 316 U. S. 265; *United States* v. *Univis Lens Co.,* 316 U. S. 241; *Chrysler Corporation* v. *United States,* 316 U. S. 556.

Statutes.

The Sherman Act of July 2, 1890, Sections 1, 2 and 4 (Act of July 2, 1890, c. 647, Secs. 1, 2 and 4, 26 Stat. 209, as amended by 36 Stat. 1167 and 50 Stat. 693, 15 U. S. C. Secs. 1, 2 and 4):

> "[Section 1.] Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is hereby declared to be illegal * * *. Every person who shall make any such contract or engage in any such combination or conspiracy hereby declared to be illegal shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding $5,000, or by imprisonment not

exceeding one year, or by both said punishments, in the discretion of the court."

"Sec. 2. Every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons, to monopolize any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be punished by fine not exceeding five thousand dollars, or by imprisonment not exceeding one year, or by both said punishments, in the discretion of the court."

"Sec. 4. The several circuit courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this act; and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney-General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition the court shall proceed, as soon as may be to the hearing and determination of the case; and pending such petition and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises."

The Clayton Act of October 15, 1914, Sections 3 and 15 (Act of October 15, 1914, c. 323, Secs. 3 and 15, 38 Stat. 731 and 736, 15 U. S. C. Secs. 14 and 25):

"Sec. 3. That it shall be unlawful for any person engaged in commerce, in the course of such commerce, to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies or other commodities, whether patented or unpatented, for use, consumption or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction

of the United States, or fix a price charged therefor, or discount from, or rebate upon, such price, on the condition, agreement or understanding that the lessee or purchaser thereof shall not use or deal in the goods, wares, merchandise, machinery, supplies or other commodities of a competitor or competitors of the lessor or seller, where the effect of such lease, sale, or contract for sale or such condition, agreement or understanding may be to substantially lessen competition or tend to create a monopoly in any line of commerce."

"Sec. 15. That the several district courts of the United States are hereby invested with jurisdiction to prevent and restrain violations of this Act, and it shall be the duty of the several district attorneys of the United States, in their respective districts, under the direction of the Attorney General, to institute proceedings in equity to prevent and restrain such violations. Such proceedings may be by way of petition setting forth the case and praying that such violation shall be enjoined or otherwise prohibited. When the parties complained of shall have been duly notified of such petition, the court shall proceed, as soon as may be, to the hearing and determination of the case; and pending such petition, and before final decree, the court may at any time make such temporary restraining order or prohibition as shall be deemed just in the premises. Whenever it shall appear to the court before which any such proceeding may be pending that the ends of justice require that other parties should be brought before the court, the court may cause them to be summoned, whether they reside in the district in which the court is held or not, and subpoenas to that end may be served in any district by the marshal thereof."

Nature of Case and Ruling Below.

The complaint in this case was filed on December 11, 1939. It charged the defendants with a combination and conspiracy to restrain and monopolize interstate trade and commerce with respect to glassware, machinery for the manufacture of glassware, and patents covering such machinery,

in violation of Sections 1 and 2 of the Sherman Act, and Section 3 of the Clayton Act. Bills of particulars were filed by plaintiff in response to defendants' motions. Answers were filed by the defendants and supplemental answers were filed by some of them.

On May 9, 1941, the District Court, on plaintiff's motion, entered an interlocutory order impounding the payments required by the terms of a certain contract between two of the defendants, viz.: Hartford-Empire Company and Hazel-Atlas Glass Company.

On August 25, 1942, the District Court entered an interlocutory order appointing a receiver of all of the property and assets of the Hartford-Empire Company, and directing the receiver to collect and earmark all of the Company's receipts from its licensees for return to them in the event of confirmation by the United States Supreme Court of the judgment to be entered herein.

On August 25, 1942, the District Court handed down an opinion, a copy of which is annexed hereto, in favor of the plaintiff.*

On October 8, 1942, the District Court entered final judgment in part as follows:

(1) Holding and adjudging the defendants to have contracted, combined and conspired in restraint of trade in patents, machinery and glassware, to have attempted, combined and conspired to monopolize the aforesaid trade, and to have monopolized said trade, in violation of Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act.

(2) Ordering among other actions:

a) The appointment of a receiver for all property of Hartford-Empire Company;

b) The earmarking and subsequent return to licensees of all royalties payable to Hartford-Empire Company;

(*CLERK'S NOTE: The opinion is printed as a separate volume.)

c) The granting of licenses to all who apply therefor, royalty-free, under substantially all present patents of Hartford-Empire Company;

d) The granting of licenses to all who apply therefor, at reasonable royalties, under substantially all future patents of Hartford-Empire Company; and

e) The imposition of numerous restrictions upon the conduct of business by the defendants, including Hartford-Empire Company.

The Questions Are Substantial.

It is submitted that the District Court erred in holding that the defendants violated Sections 1 and 2 of the Sherman Act and Section 3 of the Clayton Act.

The defendants have acted, throughout the transactions involved in the above entitled cause, solely in the manner and to the extent authorized by the patent laws of the United States.

It is further submitted that the District Court erred in ordering relief which, in part:

a) Seized all property of Hartford-Empire Company through the appointment of a receiver thereof;

b) Confiscated income and assets of Hartford-Empire Company through the impounding of royalties under present licenses and the requirement for the issuance of royalty-free licenses under present patents;

c) Imposed arbitrary restrictions upon the future conduct of business of the defendants, irrespective of whether the restrictions related to the issues of this cause or any restraint of trade, as, e.g., by compelling in perpetuity the granting of licenses ot anycne who applies therefor, at reasonable royalties, under future patents; and

d) Provided for perpetual supervision and surveillance of the defendants by the Department of Justice.

It is respectfully submitted that this action of the District Court is unnecessary, improvident and unwarranted by law; goes beyond the issues of this cause and the relief required or appropriate to prevent and restrain any violation of law alleged or held to have occurred; usurps legislative functions in imposing public utility obligations upon private business; inflicts punitive and penal rather than remedial relief in a manner not authorized by the anti-trust laws; is ex post facto in that it punishes action which when taken was in accordance with the then existing interpretation of the law; confiscates property; provides perpetual surveillance and unreasonable searches and seizures; constitutes cruel and unusual punishment; and deprives the defendants of liberty and property without due process of law.

The questions thus presented clearly are substantial and of public importance, and call for review by the Supreme Court.

Respectfully submitted,

JOHN T. CAHILL,
THURLOW M. GORDON,
E. J. MARSHALL,
S. S. WALL,
Counsel for Hartford-Empire Company, F. Goodwin Smith, Bartlett Arkell, Alexander D. Falck, Robson D. Brown, Roger M. Eldred, Karl E. Peiler, Arthus T. Safford, Jr., Theodore L. Champeau, A. M. Pease, Amory Houghton and Arthur A. Houghton, Jr., Collectively Referred to in the Above-entitled Cause as Defendants Associated with Hartford-Empire Company.

December 3, 1942.